



TESTIMONY OF ALISON E. HIRSCHHEL
MICHIGAN CAMPAIGN FOR QUALITY CARE
before the Senate Insurance Committee
June 5, 2012

Good afternoon Senator Hune and members of the Committee. My name is Alison Hirschel and I am here on behalf of the Michigan Campaign for Quality Care, a statewide grassroots organization of hundreds of consumers across the state who seek better care, better quality of life, and better choices for Michigan's long term care consumers.

I am deeply concerned about the likely impact of SB 1115-1118 which will impose additional burdens and disincentives on individuals who seek civil remedies to very real harm they or their loved ones suffered in nursing homes and other long term care facilities. I am not a trial lawyer. I have never brought a medical malpractice or negligence action on behalf of a consumer against a long term care provider. I'm a legal services lawyer who has spent the past 28 years seeking to assist victims of abuse and neglect in long term care and craft systemic reforms to address poor quality long term care. I am also counsel to the State Long Term Care Ombudsman Program and the former president of the National Citizens Coalition for Nursing Home Reform (now called the National Consumer Voice for Quality Long Term Care).

In my almost three decades of work on behalf of long term care consumers, I have become very familiar with our complex state and federal regulatory systems for nursing homes and our much less comprehensive state regulation of adult foster care homes and homes for the aged. I know that these regulatory systems simply are not sufficient to ensure vulnerable individuals consistently receive appropriate, high quality care.

Indeed, although the Bureau of Health Systems issues literally thousands of pages of detailed citations each year regarding violations in Michigan nursing facilities, we still see many providers who continue to have egregious violations year after year. We see countless instances of preventable pressure ulcers (bedsores), broken bones and other injuries due to lack of supervision, malnutrition and dehydration because facilities have too few staff to meet residents' needs, terrible consequences from medication errors, poor infection control, and a host of other unnecessary harm that causes untold suffering and

ends up costing taxpayers millions of dollars in Medicare and Medicaid funding for care that should never have had to be provided. Sometimes, my clients die from the neglect they suffer. And harm is not limited to nursing home residents. We see very similar incidents in adult foster care and homes for the aged including residents with dementia who have frozen to death because they wandered outside on a frigid night and nobody noticed.

Because our regulatory system has been unable to prevent these harrowing violations, we also need the protection of the civil justice system. An appropriate judgment or settlement in one of these cases can not only bring some small measure of justice to individuals or families who have been grievously wronged but can also provide a critical deterrent effect on other providers who seek to avoid the same costly and embarrassing consequences. The civil justice system must be another critical component in our on-going efforts to ensure we provide quality care to vulnerable long term care consumers.

Already, it is extremely hard to find a trial lawyer who will litigate the cases I hear about where clear neglect has occurred, even if the victim has suffered extraordinary harm or death. I understand these cases are expensive to bring and long term care consumers generally cannot collect economic damages. With long-standing caps on noneconomic damages, worries that juries will not value the lives or suffering of people who are already old and ill, and limited awards even in successful cases, lawyers are loathe to bring these cases. I can honestly say I have never heard of a frivolous lawsuit being filed against a long term care provider in this state, but I know countless cases that had merit and were never brought because no lawyer was willing to take them on.

The bills at issue today create significant additional hurdles to bringing these cases and make it even more unlikely that my clients who have suffered real harm will ever be able to obtain justice in the courts. Moreover, the families of my clients often tell me they want to sue not because of any judgment they might receive but because they want to ensure that what happened to their mom never happens to anyone else. They want to know that some good—a deterrent effect—came from the tragedy that befell their family. And with these bills, it will be even harder to assure them that justice will be done for their mom or that other moms and dads won't have the same experiences.

I also want to take note that nursing homes and assisted living facilities aren't like hospitals and other health care settings. In long term care, the vast majority of care is provided by unlicensed nursing assistants who often earn close to

minimum wage and have extremely limited training. Aside from the 75 hours of training nursing assistants in nursing homes are required to have in their first four months of employment, many have no background in health care or any specialized knowledge. When they make mistakes—as they often do both because of lack of training and insufficient staffing to cover all the tasks assigned to nursing assistants—it is because of negligence, not malpractice. Permitting every harm that occurs within the walls of a licensed health care facility or agency to be considered malpractice and subject to the additional burdens litigants face in those cases simply is not appropriate. Requiring unsophisticated nursing assistants to serve as the only acceptable expert witnesses for the appropriate standard of care of these employees in long term care facilities is similarly unwarranted.

In short, vulnerable elders and people with disabilities need every available remedy to address the wrongs that too often occur in long term care facilities and that cause enormous suffering and occasional deaths. Creating any additional barriers--such as the ones these bills would establish--to victims' right and opportunity to seek civil remedies when they have been harmed denies them justice, denies us the opportunity to create a deterrent and further systemic reforms, and tilts an already out of whack balance even more in favor of providers instead of consumers. I urge the Committee not to make it even harder—and perhaps impossible—for vulnerable consumers to have their day in court.

Thank you.